



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,163	03/19/2004	Ragu Saimanohar	0050-011P/FLS	7404
22831 7590 03/26/2009 SCHWEITZER CORNMAN GROSS & BONDELL, LLP 292 MADISON AVENUE - 19th FLOOR NEW YORK, NY 10017				
EXAMINER				
TRAN LIEN, THUY				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
03/26/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/805,163

**Applicant(s)**

SAIMANO HAR ET AL.

**Examiner**

Lien T. Tran

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-4, 15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-4, 15 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/5508)  
Paper No(s)/Mail Date 12/8/08
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

The 112 second paragraph rejection is hereby withdrawn due to the amendment.

Claims 2-4, 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prosise et al in view of Engelman et al and Tanaka et al.

Prosise et al disclose a method of forming nutritious snack food products. The food product comprises vegetable protein materials such as soy flour, peanut flour, cereal protein etc., mixture thereof, milk proteins such as nonfat dry milk solids, whey protein, caseins etc., fat or oil, carbohydrates including flour, sugar alcohol, glucose, xylose, fiber materials, adjunct ingredients such as leavening agent, emulsifiers, processing aids etc., flavoring agents and vitamins as shown on columns 21-22. Prosise et al disclose the steps of forming cracker as shown on columns 46-47. (see columns 10,13,15,18,19,21-23)

Prosise et al do not disclose the individual steps of forming the whole wheat flour, peanut paste, sesame paste, the use of roasted wheat germ, the thickness, diameter as claimed, the time and temperature of baking as claimed and the product having the composition as claimed.

Engelman et al disclose a process of making low carbohydrate product. They teach the use of a nutritionally complete protein food such as sesame seeds formed into protein powder. (see col. 3)

Tanaka et al disclose it is known in the art to roast soy materials to reduce beany or off-flavors. (see col. 4 lines 18-20)

Prosise et al do not disclose that the flour is roasted. Prosise et al teach to use flour in making the snack product; it would have been obvious to use whole wheat flour

to further enhance the nutrition of the product because whole wheat flour contains more fiber and nutrient than regular flour. The use of whole wheat flour is equivalent to the claimed step of powdering wheat kernels to form flour. If one does not want the convenient of using already made wheat flour, it would have been obvious to start from scratch using wheat kernels. The selection of any particular size would have been a matter of preference. The same is true with the use of peanut flour versus grinding peanut into a paste. If one wants to start from scratch, it would have been obvious to use peanut. It would have been within the skill of one in the art to determine the roasting temperature and time. It would have been obvious roast the soy flour for the reason well known in the art as shown by Tanaka et al. It would have been within the skill of one in the art to determine the appropriate roasting time and temperature through routine experimentation. It would have been obvious to use sesame seed powder as taught by Engelman et al to have a complete protein material in the Prosise et al product because they teach a mixture of protein materials can be used. It would have been obvious to roast the sesame seeds when desiring a toasted flavor. Prosise et al teach fiber materials and other cereal material can be added. Thus, it would have been obvious to add wheat germ because it is a material packed with protein, fiber, vitamin and mineral. The addition of wheat further enhances the objective of the Prosise et al food product. It would have been obvious to roast the wheat germ when wanting the toasted flavor. One skilled in the art can readily determine the roasting time and temperature through routine experimentation. It would have been obvious to one skilled in the art to determine the amounts of ingredients through routine

experimentation depending on the type of product made and the flavor, taste, texture and nutritional profile desired. It would have been obvious to vary the thickness of the dough sheet depending on the type of product and the texture wanted. It would have been obvious to cut the product in any size; this would have been a matter of preference. It would have been within the skill of one in the art to determine the appropriate baking time and temperature depending on the product made and the degree of baking wanted. Such parameters are well within the determination of one in the art. The properties of the wheat claimed are conventional and would have been present in commercially available flour. The specific sequences are matter of optimization. It would have been obvious to one skilled in the art to determine the mixing parameters that would give the most optimum working conditions and product the most optimum product. It would have been obvious to pack the product for storage and distribution. It would have been obvious to one skilled in the art to vary the amount of ingredients and to add various nutritional additives to vary the composition of the product depending on the nutritional profiled wanted for the product. Such parameter is a result-effective variable depending on the type of product wanted and would have been well within the determination of one skilled in the art.

In the response filed 12/8/08, applicant points to the "cookiedoctor.com" articles and argues that one would not necessarily be able to select a particular particle size as a matter of preference. This argument is not persuasive. It is well known that whole wheat flour comes in a variety of sizes including fine, medium, coarse and ultra fine whole wheat flour. A simple internet search will give the type of whole wheat flour that

is commercial available. It is also well known that the particle size of the flour give a different texture to a food product. For example, bread made with coarse whole flour will contain a more noticeable taste of the whole grain flour than one that is made with fine flour because the fine flour will mix in more with the other ingredients. Thus, it would have been obvious to one skilled in the art to select the size of the flour depending on the product made and the texture wanted. Smaller particle size can also be obtained from commercially available flour. For example, if it is determined that even smaller size, than the smallest size, is desirable, it would have been obvious to further reduce the size using a grinder such as a coffee grinder. Selecting the particle size of the wheat flour would have been an obvious matter of preference. The paper submitted by applicant states that it is unusual for a particular miller to have different particle size; it does not state anything about the size being unavailable or uncommon. As to the thickness, varying the thickness of food products is not a novel concept and the degree of variation varies widely. For example, there are thin potato chips and thick potato chips, thin crust pizza and thick crust pizza, thin cookies and thick cookies etc.. Applicant has not presented any evidence to show that varying the thickness is not done or known in the art. The articles submitted by applicant do not state that snack only comes in one uniform thickness. The flour taught in Prosise is not roasted and applicant has not shown any superior result of the claimed product versus the prior art product. A conclusion does not equate to factual evidence.

Applicant further argues selecting the sesame seed component as claimed is not simply a matter of selecting sesame component from the Engelman et al reference.

This argument is not persuasive. Engelman et al teach to add sesame seeds to food products to obtain low carbohydrate and high protein baked product. Prosis et al teach a variety of protein sources can be used to make the nutritional foods; thus, it would have been obvious to add sesame as the protein source when the taste of sesame is wanted. The selection of the sesame as a paste, a powder or as seeds or a combination of all depends on the flavor, taste and configuration wanted. For example, if the sesame is wanted inside the product and it is also wanted to have the sesame seed shown on the surface of the product or inside the product, it would have been obvious to use a combination of both paste and seed. Applicant argues the product end result is quite a different matter; it is obvious the end result is different but the result is not unexpected. When the seed is used as powder, it will be mixed in with other ingredients; but the addition of the sesame as whole seed will result in the seed being separate entity in the final product. Varying the form of ingredients in food manufacturing is not uncommon. For example, peanut butter cookie is made with peanut paste added to other ingredients, but whole peanut or peanut pieces can also be added to obtain a different look and enhanced taste. Applicant argues Engelman et al teach the sesame powder component in amount of 12.8% which is more than the claimed amounts. The Engelman et al reference is only relied upon to show the use of sesame seed as protein source to make low carbohydrate and high protein product. The amount that is added can vary depending on the taste of the sesame component and the protein content wanted. If only a little sesame flavor is wanted and the product already contain a high protein content from other protein sources, it would have been

obvious to use only small amount of sesame component. Determining the specific amount would have been within the skill of one in the art depending on the properties wanted in the product. Applicant's comment concerning the extrusion of oil is not relevant to the issue at hand because the claims do not have any limitation of extruding oil from the sesame seed. Furthermore, if a powder is used and it is inherent that the sesame seeds have to be ground to obtain the powder; thus, the same extrusion of oil will occur.

Applicant argues the Tanaka disclosure of roasting soy flakes is really unrelated to the formulation of snack food product. The Tanaka is only relied upon to show that roasting of soybean reduces the beany or off-flavors. Thus, it would have been obvious to roast the soybean when desiring to reduce the beany or off-flavors when making the Prosize et al product. Tanaka is not used to show the making of the snack product. The roasting time and temperature can readily be determined by one skilled in the art depending on the degree of roast wanted. Such determination would only require routine experimentation and would have been well within the skill of one in the art. Applicant argues against the references individually; one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant argues that the roasting time and temperature affects the dough and the final properties of the product produced. Applicant has not established any criticality or shows any unexpected result of the claimed time and temperature.



Applicant's arguments filed 12/8/08 have been fully considered but they are not persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks, can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

March 24, 2009

/Lien T Tran/

Primary Examiner, Art Unit 1794